

**MINUTES**  
**REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS**  
**Tuesday, February 17, 2009, at 9:00 a.m.**  
**Scott Hart Auditorium**  
**303 North Roberts, Helena, MT**

*PRESENT: Governor Brian Schweitzer, Attorney General Steve Bullock, Secretary of State Linda McCulloch, and Superintendent of Public Instruction Denise Juneau*

*VIA PHONE: Auditor Monica Lindeen*

**Ms. Juneau moved for approval of the minutes from the January 27, 2009, meeting of the Board of Land Commissioners. Seconded by Ms. McCulloch. Motion carried unanimously.**

**BUSINESS CONSIDERED:**

**209-1      FWP: HAY CREEK ACQUISITION**

Ms. Sexton stated that Hay Creek is a 53-acre undeveloped parcel in Flathead County. The selling price is \$400,000. Funding is through the Bonneville Power Administration (BPA) Mitigation Fund.

Paul Sihler, FWP Field Services Administrator, stated this is a fee title acquisition that must be agreed upon by FWP and the Confederated Salish and Kootenai Tribes (CSKT). The project is to protect fisheries habitat in the Flathead River basin and will be encumbered by a conservation easement, as required by the BPA funding. The property is adjacent to the Flathead National Forest, which creates the possibility for a future land exchange with the Forest Service. FWP received five comments in favor of the project.

**Motion made by Ms. McCulloch for final approval of Hay Creek acquisition. Seconded by Mr. Bullock. Motion carried unanimously.**

**209-2      FWP: FOY'S BEND ACQUISITION**

Ms. Sexton stated that this is a 245-acre property. It was appraised at \$3,000,000. The selling price is \$2,000,000. Funding is from the BPA Mitigation Fund.

Mr. Sihler stated that the property contains 2.2 miles of riparian habitat. The DNRC received eighteen comments in support of the acquisition. One comment expressing concern over increased traffic and weed control was received.

**Motion made by Mr. Bullock to approve the Foy's Bend acquisition. Seconded by Ms. McCulloch. Motion carried unanimously.**

**~~209-3      TIMBER SALE: WHITE PORCUPINE #1~~**

*Item postponed until March 16, 2009, Land Board meeting.*

**209-4      APPROVAL FOR COMMUNITIZATION AGREEMENT – ST. MARY LAND & EXPLORATION COMPANY**

*Ms. Sexton gave a brief overview of what a communitization agreement is.*

This agreement is with the St. Mary Land & Exploration Company in the Mission Canyon and Red River Formations. The DNRC would receive 6.5 percent of all oil production and 6.25 percent of all gas production.

Motion made by Ms. Juneau for approval of the communitization agreement. Seconded by Ms. McCulloch.

Governor Schweitzer elaborated on state law regarding ownership rights of minerals and oil. Typically, property owners own the mineral rights from the surface to the center of the earth. This particular communitization is unusual because there is separate ownership at different vertical depths. Governor Schweitzer noted that in some Canadian provinces, all mineral rights are determined by vertical depth.

**Motion to approve communitization agreement carried unanimously.**

**209-5      PRELIMINARY APPROVAL OF LAND BANKING SALES – GARFIELD COUNTY**

*Ms. Sexton listed the three steps in the land banking process.*

- 1. Preliminary approval of a nominated parcel:*
  - a. appraisal;*
  - b. due diligence; and*
  - c. investigate potential negative impact to the parcel or area.*
- 2. Set minimum bid based off appraised value:*
  - a. appraised with and without access;*
  - b. minimum bid must be approved by Land Board; and*
  - c. parcel is presented for public auction.*
- 3. Final approval of the winning bid must be given by the Land Board.*

The two parcels in Garfield County are grazing land with no access.

Motion made by Ms. McCulloch for preliminary approval. Seconded by Ms. Juneau.

Ms. Juneau asked if parcels come before the Land Board for approval at each of the three steps of the process?

Ms. Sexton said yes.

Ms. Juneau asked for elaboration in regards to appraising land both with and without access.

Ms. Sexton responded that the two appraisals' values do not always vary. Often, if the parcel is purchased by a surrounding landowner, the land becomes accessible, where previously it was not.

Governor Schweitzer stated that the minimum bid has not always pleased potential bidders, but only once has the set minimum bid been rejected. In the private sector, prices are often determined after a series of offer and counter-offers. He stated that it is a reasonable question to ask if the parcels are being appraised for enough value. Governor Schweitzer suggested that at times the school trust could benefit from having the minimum bid set higher.

Mr. Bullock said that the dollar per acre appraised value has seemed lower than he thought it would be at times.

Tom Schultz, Trust Land Management Division Administrator, stated that there have been a significant number of acres that have not even come before the Land board, because they were withdrawn once the appraisal was done. The DNRC had 20,000 acres that have been withdrawn in the past few months before ever coming before the Land Board because of that very issue. Parcels come for preliminary approval and then are withdrawn by the lessees, after they have given consideration of current market values.

Ms. Sexton added that most of the sales occurred before the current economic downturn. The DNRC is losing nominators given the assumption that because of the current economic situation, perhaps prices have declined.

**Motion for preliminary approval carried unanimously.**

**209-6      SET MINIMUM BIDS FOR LAND BANKING PARCELS:**

Ms. Sexton stated that these are parcels that have already gone through the appraisal process. Most of the appraisals are based on land sales that have occurred in the previous one and one-half years. The lessees are aware of the appraised value, and are also free to have their own appraisals done. These lessees have stated their continued interest in purchasing the parcel(s), although they understand other parties may bid against them.

**A. BEAVERHEAD COUNTY**

Parcels 120, 121, and 259 are leased by the Erb Livestock Corporation. Parcel 564 is leased by a private individual (John McCullum). The parcels were appraised, with access, for \$724,000.

**Motion made by Ms. Lindeen to set minimum bids in Beaverhead County.  
Seconded by Ms. McCulloch. Carried unanimously.**

**B. BROADWATER COUNTY**

Parcel 304 is 181 acres leased by the MCL Ranch. It was appraised at \$181,000.

**Motion made by Ms. Lindeen to set the minimum bid in Broadwater County.  
Seconded by Ms. Juneau. Carried unanimously.**

**C. JEFFERSON COUNTY**

Ms. Sexton stated the parcel 140 is 160 acres and was nominated by the DNRC. The appraised value is \$320,000. There is a stipulation allowing only one housing development. The DNRC intends to market the parcel specifically for development.

There had been disagreement between Ash Grove Cement Company and Jefferson County regarding access. The dispute was settled, and the parcel now has legal access. Ash Grove had previously expressed interest in purchasing the parcel, but that appears to no longer be the case.

**Motion made by Ms. McCulloch to set the minimum bids in Jefferson County. Seconded by Ms. Juneau.**

Mr. Bullock asked why the DNRC would sell parcel 140 when it is so close to other development in that area? He posited that perhaps the state should maintain ownership of the parcel for a decade or more in order to potentially increase its value.

Ms. Sexton answered that the future value of the parcel is difficult to determine. The parcel has not been productive for the DNRC, and has very little recreational value. There have also been problems with people accessing the land illegally. The parcel complies with the DNRC land banking rules, as well as Jefferson County's rules for development.

Ms. Sexton stated that had the DNRC had offered this parcel several years previously, there may not have been the dispute over access and perhaps the parcel would have been more valuable. She also noted that this parcel may prove to be one where there are no parties willing to meet the minimum bid of \$320,000. That would indicate that this is not the time to sell.

Governor Schweitzer added that the alternative could be that now that the parcel has been awarded legal access, it may be viewed as more valuable than the appraised value. Either way, the parcel guarantees an active market. If there is no buyer, there is no buyer; if there is more than one buyer interested, it will increase the price.

Mr. Bullock asked what percentage of land banking parcels already have access?

Ms. Sexton said that 97 percent of the lands being sold in land banking do not have access. Lands that are appraised at a higher value tend to be the lands with access. The DNRC has strict rules and guidelines regarding what is sold, and under what conditions. Lands with development value may bring more revenue from smaller parcels.

**Motion to set minimum bids carried in Jefferson County unanimously.**

#### **D. PONDERA COUNTY**

Ms. Sexton stated that all parcels in Pondera County were nominated by the lessees. Parcel 58 is legally accessible via county road. Fencing incorporated into adjacent state lands causes difficulty in determining the location of the state parcel. Small, isolated parcels are more difficult to manage, and those parcels are particularly suited for land banking consideration. The appraiser was unable to find comparable sales without access. The total appraisal value, with access, is \$61,000.

Motion made by Ms. Juneau to set minimum bids in Pondera County. Seconded by Mr. Bullock.

Governor Schweitzer stated that a management tool used by the DNRC is to require a site inspection of parcels that are leased for grazing at least once every ten years. Inspecting all of the small 20- to 80-acre parcels has proven challenging. It has been beneficial to land bank those type of parcels and then acquire larger blocks of land. That facilitates easier management and compliance, as well as often providing greater access.

Ms. Sexton added that the DNRC has 18 to 20 land use specialists that manage the 4,000,000 acres of grazing land. A site inspection may occur more frequently than every ten years if the parcel has had issues such as weed or trespass problems.

**Motion to approve minimum bids in Pondera County carried unanimously.**

**E. TETON COUNTY**

Ms. Sexton stated there are six parcels in Teton County, appraised at \$524,000. The DNRC recently purchased land in Teton County (see *1108-10: Final Approval for Debruycker Farm Land Banking Acquisition, November 17, 2008, Land Board meeting*). The DNRC tries to balance activity in a county by making a purchase in the same county where land was sold, or vice-versa.

Ms. Sexton singled out parcel 40 as having a high appraisal value of \$327,000. Parcel 60 is accessible via a county road.

Motion made by Mr. Bullock to set minimum bids in Teton County. Seconded by Ms. McCulloch.

Ms. McCulloch asked if the appraisal values differed so greatly within the same county because of the location of the parcels?

Ms. Sexton said yes. She noted that amenity resources such as view or wildlife will alter the value of a parcel (e.g. property along the Rocky Mountain Front is valued much higher than other areas of Teton County).

**Motion to set minimum bids in Teton County carried unanimously.**

**209-7      FINAL APPROVAL OF LAND BANKING SALES:**

**A. CARBON COUNTY**

Ms. Sexton stated that the 640 acre parcel in Carbon County sold for \$256,000.

**Motion for final approval made by Ms. Lindeen. Seconded by Ms. McCulloch. Carried unanimously.**

*209-7B through D were considered as a block. Ms. Sexton gave a brief overview of each.*

**B. FERGUS COUNTY**

Three small parcels in Fergus County sold for \$63,000.

**C. WHEATLAND COUNTY**

Three of the parcels in Wheatland County were nominated by the lessees. The Duncan Colony owns improvement on parcel 462. The parcels sold for \$668,790.

**D. YELLOWSTONE COUNTY**

The 160-acre parcel in Yellowstone County sold for \$70,400.

**Motion made by Ms. Juneau for final approval of 209-7B through 209-7D. Seconded by Ms. McCulloch. Motion carried unanimously.**

**209-8      FINAL APPROVAL OF LYMAN CREEK LAND EXCHANGE**

*Ms. Sexton explained the criteria that the DNRC has for a land exchange:*

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- ♦ *the land must be of equal or greater value;*
- ♦ *no land bordering on navigable lakes and streams;*
- ♦ *the land must generate equal or greater income;*
- ♦ *the exchange must be of equal or greater acreage;*
- ♦ *allows for the consolidation of state lands;*
- ♦ *there is potential for long term application; and*
- ♦ *legal access must be maintained.*

Ms. Sexton stated that this exchange is between FWP and DNRC. FWP owns 367.92 acres in the Sula State Forest, valued at \$710,000. DNRC owns 240 acres in the Calf Creek and Threemile Wildlife Management Area, valued at 709,000. The DNRC will retain the timber rights on the land exchanged with FWP. The DNRC land in the Sula State Forest burned in 2000, thus there is no excess timber value on these lands.

Motion made by Ms. Lindeen for final approval of the Lyman Creek land exchange.  
Seconded by Ms. McCulloch.

Ms. Juneau asked for clarification regarding the DNRC retaining timber harvest rights, FWP gaining more acreage, and the 60 year rate-of-return.

Ms. Sexton explained that the DNRC looks at the potential valuation of timber harvesting over a period of 60 years, factoring in regrowth.

Governor Schweitzer noted that there has been no public comment regarding this exchange. He stated that a similar exchange in the past—with significant public outcry—resulted in the Land Board not approving that particular exchange (see 1205-6: *Final Approval for the Miller Land Exchange, February 21, 2006, Land Board minutes*). The Lyman Creek land exchange has not generated the same public reaction.

Ms. Juneau asked how the DNRC determines the timber value?

Mr. Schultz stated that the DNRC assigns a price to the timber (currently that price is \$230 per thousand board foot). Then the DNRC runs that out over 60 years and discounts it back to today to see what that value is worth if there was a harvest in the next 60 years. He stated that the values of the lands being exchanged are roughly equal, but the income potential would be unequal. The DNRC is trying to retain the income strength in order to maintain income exchange balance.

Ms. Juneau asked how quickly the DNRC anticipates income return through timber harvesting?

Mr. Schultz answered that it is difficult to determine. He stated that there is a bill before the legislature this session (HB 42) that requires FWP to have a timber management plan in place in all their wildlife management areas. FWP and DNRC have similar exchange agreements in other locations, with the idea of a interagency cooperative timber management program. If this exchange does not provide the expected income for the DNRC, the income would come from another source to offset any potential income lost.

Ms. Sexton added that the DNRC has assisted FWP with other timber sales in the past. FWP is being encouraged to take a more active role in timber harvesting for hazardous fuels reduction.

**Motion for final approval of the Lyman Creek land exchange carried unanimously.**

209-9

**EASEMENTS:**

**A. RIGHTS-OF-WAY**

Ms Sexton singled out the Ayers' application which is to amend an easement to include a residence. A stipulation is included which states that if the land is ever subdivided, there will be a one percent conveyance fee on all parcels sold.

The remaining right-of-way applications are for standard utilities.

Motion made by Ms. McCulloch to approve 209-9A . Seconded by Mr. Bullock.

Governor Schweitzer asked Ms. Sexton to elaborate on the concept behind the one percent conveyance fee.

Ms. Sexton explained that the DNRC found that many easements are granted for development purposes. If the DNRC denied the application, it could be infringing on the rights of property owners. If the DNRC approved the application, the land could increase in value without benefit to the DNRC.

The DNRC instituted the policy that the access easement is attached only to the initial easement holder. If the property is subdivided, the access cannot be transferred. Access must be brought again before the DNRC again by the new owners. The DNRC charges a one percent conveyance fee based on the value of the land at the time of sale.

Jeanne Holmgren, Real Estate Management Bureau Chief, said that the DNRC has received the conveyance fee from an easement in Kalispell.

Governor Schweitzer gave some background information on the development of the conveyance fee. There are areas where state land parcels are intermingled with parcels owned by private timber companies. Governor Schweitzer stated that the state has no intention of developing its land. Should the timber companies sell parcels for subdivision, it becomes difficult to manage the state lands in those areas. The conveyance fee is intended to offset lost income that would have been generated by managing the timberland.

Ms. Juneau asked where the decision on the conveyance fee originated?

Ms. Sexton answered that the fee was a decision made by the Land Board.

**Motion to approve 209-9A carried unanimously.**

**B. USFS COST SHARE AGREEMENT – DUCK TO DOG**

Ms. Sexton stated that state land is occasionally intermingled with USFS land. In order for access to be maintained, easements are exchanged. The DNRC has a master cost/share agreement with the USFS. Ms. Sexton explained that the USFS owes the state \$18,525 and the state owes the federal government \$95,317. Upon approval by the Land Board, the balances due would be applied to the master cost/share balance sheet. Both parties benefit from gained or maintained access to their lands, as well as shared maintenance and future reconstruction costs.

Motion made by Mr. Bullock to approve the cost/share agreement. Seconded by Ms. Juneau.

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Ms. Juneau asked for further explanation of the cost/share agreement, and the large disparity of costs.

Ms. Sexton answered that the difference comes from the state having gained more access to lands.

Mr. Schultz elaborated that the state gained access to 29.38 acres of USFS land, while the Forest Service gained only 1.02 acres of access to state land. Thus, the cost to the state is greater in this instance. In a different instance, the acres and costs could be reversed.

**Motion to approve 209-9B carried unanimously.**

**Motion to adjourn made by Ms. McCulloch. Seconded by Ms. Juneau. Carried unanimously.**